

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

STOTT AERIAL SPRAY, INC.
Greene County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 20 11 -AQ- 01
NO. 20 11 -SW- 02

TO: Jerry Stott, Registered Agent
Stott Aerial Spray, Inc.
205 East Harrison
Jefferson, Iowa 50129

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Stott Aerial Spray, Inc. (Stott Aerial) for the purpose of resolving the air quality, solid waste disposal, and hazardous condition reporting violations which occurred at the Jefferson Airport. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Thad Nanfite, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code

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(IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

Stott Aerial neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. The City of Jefferson owns the Jefferson Airport located east of town. Stott Aerial operates an aerial spraying operation at the Jefferson Airport via a lease agreement.

2. On August 18, 2009, DNR Field Office 4 received a complaint regarding unreported chemical spills at the airport and alleged that chemical jugs were being burned in a hole at the airport. The complainant observed airplanes leaking and Lorsban spilled on the south side of the Jefferson Airport ramp. The complainant stated that unripped chemical jugs were burned in a hole at the east end of the runway and the runway turns red from the chemicals when it rains.

3. On September 1, 2009, Ryan Young and Thad Nanfite, DNR Field Office 4 environmental specialists investigated the complaint. During the investigation, Mr. Young and Mr. Nanfite observed a variety of chemical containers and burned remnants of chemical containers in an excavated burn area located on the east end of the airport property. Mr. Young and Mr. Nanfite spoke to the airport manager who confirmed that the burning activities had been performed by Stott Aerial. The field office personnel informed the airport manager that the burning must cease immediately. The field office personnel also observed evidence of an unreported spill south and west of the terminal. They noted a stained area on the concrete and the airport manager stated that Stott Aerial had caused the spill and washed the material into a subsurface drain. The airport manager informed the field office personnel that other spills have occurred in the same area and have been allowed to run into the grassed area to the south.

4. On September 30, 2009, DNR issued a Notice of Violation letter to Stott Aerial for the open burning violations as well as the failure to report a hazardous condition. The letter required Stott Aerial to submit a written report regarding the spill. The letter also required Stott Aerial to properly store and handle chemical containers. The letter informed Stott Aerial that the matter was being referred for further enforcement. A similar Notice of Violation was also issued to the City of Jefferson on the same day.

5. On October 9, 2009, Mr. Nanfite returned to the airport to collect samples of the spill area. During the visit, Mr. Nanfite observed areas of stained grass south of the Stott Aerial loadout area, indicating that chemicals had been allowed to run off into the grass. Mr. Nanfite also collected a composite sample of the soil. The laboratory results indicated contamination consistent with spills of chlorpyrifos and pyraclostrobin, both found in aerial spraying chemicals.

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6. Stott Aerial has had a prior prohibited discharge of chemicals at the Jefferson Airport. In June 2006, DNR Field Office 4 investigated a complaint regarding contamination in a tributary of Hardin Creek. During the investigation, a representative of Stott Aerial informed the field office personnel that several gallons of 2, 4-D had been washed into a sump. The sump was pumped to a concrete pad that flowed to a storm drain. The storm drain emptied into the tributary of Hardin Creek. The field office's laboratory samples indicated 2, 4-D contamination. In July 2006, Stott Aerial was issued a Notice of Violation letter for the prohibited discharge and water quality violations. The letter also included a violation for Stott Aerial's failure to report a hazardous condition.

IV. CONCLUSIONS OF LAW

Stott Aerial neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). DNR Field Office 4 personnel noted evidence of the open burning of used chemical containers in a burn pit at the airport. The open burning was conducted by Stott Aerial. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. DNR Field Office 4 personnel noted evidence of the open burning of used chemical containers in a burn pit at the airport. The containers were burned rather than being disposed of at an approved landfill. Stott Aerial failed to properly dispose of the chemical containers. The above facts demonstrate noncompliance with this provision.

5. 567 IAC 131.2 requires that any person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the DNR and the local police department or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. 567 IAC 131.1 defines hazardous condition as any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state or into the atmosphere which, because of the quantity, strength and toxicity of the hazardous substance,

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its mobility in the environment and its persistence, creates an immediate or potential danger to the public health or safety or to the environment. The chemical spill of contaminants at the Jefferson Airport by Stott Aerial constitutes a hazardous condition. Stott Aerial failed to notify the DNR and the local police of the hazardous condition. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, it is hereby ordered and Stott Aerial agrees to do the following:

1. Stott Aerial shall cease all improper solid waste disposal;
2. Stott Aerial shall cease all non-exempt open burning;
3. Stott Aerial shall prepare a training plan and train all of its employees regarding the DNR's spill reporting requirements by June 15, 2011. A copy of the employee training plan and a verification of the training shall be submitted to DNR Field Office 4 within ten days of the training completion; and
4. Stott Aerial shall pay a penalty of \$5,000.00 in accordance with the following payment plan.

\$400.00 due February 1, 2011;	\$575.00 due April 15, 2012;
\$575.00 due April 15, 2011;	\$575.00 due July 15, 2012;
\$575.00 due July 15, 2011;	\$575.00 due October 15, 2012; and
\$575.00 due October 15, 2011;	\$575.00 due January 15, 2013.
\$575.00 due January 15, 2012;	

If any of the payments are not received in accordance with the payment plan, the remaining penalty shall be due immediately.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter. Iowa Code section 455B.386 authorizes a penalty up to \$1,000.00 for failure to report a hazardous condition.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the

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most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$5,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Failing to properly dispose of the chemical containers has allowed Stott Aerial to avoid the cost of the landfill fees, transportation costs, and personnel costs. The estimated economic benefit is \$500.00 in avoided landfill fees, transportation costs, and personnel costs. Additionally, Stott Aerial has delayed the cost of constructing a proper containment basin for the chemicals. The estimated economic benefit in delayed construction, planning, and engineering fees is \$1,000.00. Based on the above considerations, \$1,500.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Failure to report spills prohibit the DNR from being able to ensure that the spill is remediated properly. The violations cited in this administrative consent order threaten the integrity of the environmental regulatory program. Based on the above considerations, \$2,000.00 is being assessed for this factor.

Culpability – Stott Aerial has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. Stott Aerial received a prior Notice of Violation for a prohibited discharge of the chemicals, water quality violations, and a failure to report a hazardous condition. Based on the above considerations, \$1,500.00 is assessed for this factor.


VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Stott Aerial. For that reason, Stott Aerial waives the rights to appeal this administrative consent order or any part thereof.

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VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



PATRICIA M. BODDY, INTERIM DIRECTOR
Iowa Department of Natural Resources

Dated this 2 day of
Feb, 20 11



STOTT AERIAL SPRAY, INC.

Dated this 21 day of
Dec, 20 10

Barb Stock (Con 10-6 Greene County); Kelli Book; DNR Field Office 4; EPA; VI.C and VII.C.1

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